

PRISONER'S CIVIL RIGHTS COMPLAINT (Rev. 05/2015)

IN THE UNITED STATES DISTRICT COURT
FOR THE Eastern DISTRICT OF TEXAS
Lufkin DIVISION

Michael Jerrial Ihenyenwa, TDCJ# 1638105
Plaintiff's Name and ID Number

Palacios Unit
Place of Confinement

CASE NO. 9:19cv1
(Clerk will assign the number)

v.
Irma Texas Board of Criminal Justice
P.O. Box 99, Huntsville, Texas 77347
Defendant's Name and Address
Irma D. Sterling-Sims
3812 FM 350 South, Livingston, Texas 77351
Defendant's Name and Address

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
JAN 04 2019
BY
DEPUTY

Defendant's Name and Address
(DO NOT USE "ET AL.")

INSTRUCTIONS - READ CAREFULLY

NOTICE:

Your complaint is subject to dismissal unless it conforms to these instructions and this form.

1. To start an action you must file an original and one copy of your complaint with the court. You should keep a copy of the complaint for your own records.
2. Your complaint must be legibly handwritten, in ink, or typewritten. You, the plaintiff, must sign and declare under penalty of perjury that the facts are correct. If you need additional space, **DO NOT USE THE REVERSE SIDE OR BACKSIDE OF ANY PAGE.** ATTACH AN ADDITIONAL BLANK PAGE AND WRITE ON IT.
3. You must file a separate complaint for each claim you have unless the various claims are all related to the same incident or issue or are all against the same defendant, Rule 18, Federal Rules of Civil Procedure. Make a short and plain statement of your claim, Rule 8, Federal Rules of Civil Procedure.
4. When these forms are completed, mail the original and one copy to the clerk of the United States district court for the appropriate district of Texas in the division where one or more named defendants are located, or where the incident giving rise to your claim for relief occurred. If you are confined in the Texas Department of Criminal Justice, Correctional Institutions Division (TDCJ-CID), the list labeled as "VENUE LIST" is posted in your unit law library. It is a list of the Texas prison units indicating the appropriate district court, the division and an address list of the divisional clerks.

FILING FEE AND *IN FORMA PAUPERIS* (IFP)

1. In order for your complaint to be filed, it must be accompanied by the statutory filing fee of \$350.00 plus an administrative fee of \$50.00 for a total fee of **\$400.00**.
2. If you do not have the necessary funds to pay the fee in full at this time, you may request permission to proceed *in forma pauperis*. In this event you must complete the application to proceed *in forma pauperis*, setting forth information to establish your inability to prepay the fees and costs or give security therefor. You must also include a current six-month history of your inmate trust account. If you are an inmate in TDCJ-CID, you can acquire the application to proceed *in forma pauperis* and the certificate of inmate trust account, also known as *in forma pauperis* data sheet, from the law library at your prison unit.
3. The Prison Litigation Reform Act of 1995 (PLRA) provides "... if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee." See 28 U.S.C. § 1915. Thus, the court is required to assess and, when funds exist, collect, the entire filing fee or an initial partial filing fee and monthly installments until the entire amount of the filing fee has been paid by the prisoner. If you submit the application to proceed *in forma pauperis*, the court will apply 28 U.S.C. § 1915 and, if appropriate, assess and collect the entire filing fee or an initial partial filing fee, then monthly installments from your inmate trust account, until the entire \$350.00 statutory filing fee has been paid. (The \$50.00 administrative fee does not apply to cases proceeding *in forma pauperis*.)
4. If you intend to seek *in forma pauperis* status, do not send your complaint without an application to proceed *in forma pauperis* and the certificate of inmate trust account. Complete all essential paperwork before submitting it to the court.

CHANGE OF ADDRESS

It is your responsibility to inform the court of any change of address and its effective date. Such notice should be marked "**NOTICE TO THE COURT OF CHANGE OF ADDRESS**" and shall not include any motion for any other relief. Failure to file a NOTICE OF THE COURT OF CHANGE OF ADDRESS may result in the dismissal of your complaint pursuant to Rule 41(b), Federal Rules of Civil Procedure.

I. PREVIOUS LAWSUITS:

A. Have you filed *any* other lawsuit in state or federal court relating to your imprisonment? YES NO

B. If your answer to "A" is "yes", describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, giving the same information.)

1. Approximate date of filing lawsuit: 8/27/2017

2. Parties to previous lawsuit:

Plaintiff(s) Michael Terrial Ihenyenwa

Defendant(s) Gloria Carrington, ET AL

3. Court: (If federal, name the district; if state, name the county.) Northern District of Texas

4. Cause number: 5:17-cv-150

5. Name of judge to whom case was assigned: Sam R. Cummings, U.S. Dist. Judge

6. Disposition: (Was the case dismissed, appealed, still pending?) Dismissed

7. Approximate date of disposition: 7/14/2015

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- A. Have you filed *any* other lawsuit in state or federal court relating to your imprisonment? ✓ YES NO
- B. If your answer to "A" is "yes", describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, giving the same information.)

1. Approximate date of filing lawsuit: 1/26/2015

2. Parties to previous lawsuit:

Plaintiff(s) Michael Jerrial Thenyenwa

Defendant(s) Lorie Davis, Asst. Dist. Atty. Dept. Crim. Justice

3. Court: (If federal, name the district; if state, name the county.) Northern District of Texas

4. Cause number: 4:15-cv-060

5. Name of judge to whom case was assigned: Reed C. O'Connor, U.S. Dist. Judge

6. Disposition: (Was the case dismissed, appealed, still pending?) Appealed

7. Approximate date of disposition: N/A

FILING FEE AND *IN FORMA PAUPERIS* (IFP)

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I. PREVIOUS LAWSUITS:

A. Have you filed *any* other lawsuit in state or federal court relating to your imprisonment? ✓ YES NO

B. If your answer to "A" is "yes", describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, giving the same information.)

1. Approximate date of filing lawsuit: 05/07/2018

2. Parties to previous lawsuit:

Plaintiff(s) Michael Terrial Ihenyenwa

Defendant(s) Elrodbrick B. Wells, ET AL

3. Court: (If federal, name the district; if state, name the county.) Eastern District of Texas

4. Cause number: 5:18-cv-0668

5. Name of judge to whom case was assigned: Robert W. Schroeder, U.S. Dist. Judge

6. Disposition: (Was the case dismissed, appealed, still pending?) still pending

7. Approximate date of disposition: NIA

II. PLACE OF PRESENT CONFINEMENT: Polunsky Unit

III. EXHAUSTION OF GRIEVANCE PROCEDURES:

Have you exhausted all steps of the institutional grievance procedure? YES NO

Attach a copy of your final step of the grievance procedure with the response supplied by the institution.

IV. PARTIES TO THIS SUIT:

A. Name and address of plaintiff: Michael Jerrail Ihenyewa, 3872 FM 350, South, Livingston, Texas 77351

B. Full name of each defendant, his official position, his place of employment, and his full mailing address.

Defendant #1: Texas Department of Criminal Justice, P.O. Box 99, Huntsville, Texas 77342

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

Defendant, Texas Board of Criminal Justice, violated Plaintiff's rights to Freedom of

Defendant #2: Trina D. Sterling-Sims, Clerk II, Polunsky Unit, 3872 FM 350, South, Livingston, Texas 77351

Briefly describe the acts(s) or omission(s) of this defendant which you claimed harmed you.

Defendant, Trina D. Sterling-Sims, unlawfully impinged on Plaintiff's rights to Freedom of

Defendant #3: _____

Briefly describe the acts(s) or omission(s) of this defendant which you claimed harmed you.

Defendant #4: _____

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

Defendant #5: _____

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

IV. PARTIES TO THIS SUIT: CONT'

Defendant #1

... speech and protections against unlawful governmental interference in a employing a written or unwritten inadequate training policy or procedure regarding sufficient training of Pelinsky Unit Milroom Staff, which was the direct cause of defendant Sims violating Plaintiff's constitutional rights, violated his First and Fourteenth Amendment rights to the United States Constitution, respectively.

Defendant #2

... in obstructing him from receiving a written communication from an outside party by employing a blanket ban, in part, on the communication, violated Plaintiff's rights to freedom of speech and protections against unjustified governmental interference under the First and Fourteenth Amendment rights to the United States Constitution, respectively.

V. STATEMENT OF CLAIM:

State here in a short and plain statement the facts of your case, that is, what happened, where did it happen, when did it happen, and who was involved. Describe how each defendant is involved. You need not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach extra pages if necessary, but remember the complaint must be stated briefly and concisely. IF YOU VIOLATE THIS RULE, THE COURT MAY STRIKE YOUR COMPLAINT.

(Count 1)

The Texas Board of Criminal Justice ("TBCJ"), by and through its own and/or delegated decisionmaking authorities ^{written and unwritten inadequate training} or procedure in training its Polunsky Unit Mailroom Staff ("TL Unit M.R. Staff") how to properly apply BP-03.91 and/or how to properly handle Plaintiff, Michael Terrial Ihenyenwa ("Ihenyenwa") regular, legal mail and/or correspondence review was the direct cause of, Trina D. Sterling-Sims, Clerk II ("Sims") impinging on Ihenyenwa's First Amendment right to receive mail correspondence, in that, Sims employed (unlawfully) a blanket ban, on or about November 6, 2018, in denying "[e]ighty-six (86) pages] of a previously denied publication" which were photocopied

VI. RELIEF:

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

Declaration that Sims impinged on Ihenyenwa's First ^{and Fourteenth Amendment} Amendment rights in censoring his received correspondence and/or employing a blanket ban on photocopied

VII. GENERAL BACKGROUND INFORMATION:

A. State, in complete form, all names you have ever used or been known by including any and all aliases.

Michael Terrial Ihenyenwa

B. List all TDCJ-CID identification numbers you have ever been assigned and all other state or federal prison or FBI numbers ever assigned to you.

TDCJ # 1638105

VIII. SANCTIONS:

A. Have you been sanctioned by any court as a result of any lawsuit you have filed? YES NO

B. If your answer is "yes," give the following information for every lawsuit in which sanctions were imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed sanctions (if federal, give the district and division): _____

2. Case number: _____

3. Approximate date sanctions were imposed: _____

4. Have the sanctions been lifted or otherwise satisfied? YES NO

V. STATEMENT OF CLAIM: LONT

pages of a Rolling Stone Publication, issue number 1317, July 2018. TBCJ was deliberate and indifferent to the Unit M.R. staff and/or Sims' need for sufficient and additional training on or about September 25, 2018 and/or October 27, 2018. Upon information and belief, on or about November 14th and 15th, 2018, newly installed TL Unit M.R. Supervisor, Glenda J. McNeil, Admin. Asst. I ("McNeil") and Assistant, Sims received additional training; on or about November 15, 2018, Sims confided to Ibenyenwa about the inadequate training as "boring ass videos"; and, on or about November 19, 2018, McNeil and Sims relied upon their inadequate training after Ibenyenwa protested, "You can't enforce a blanket denial on 86 pages of photocopies," in attesting, "I'll look in to it, but if it's already been denied before you can't get it."

COUNT 2

Furthermore, on or about November 8, 2018, Sims unlawfully impinged on Ibenyenwa's First and/or Fourteenth Amendment right to freedom of speech and protections against unjustified governmental interference with written communication received from an outside party in censoring, in part "86 pages" of a previously denied publication in enforcing a blanket ban on photocopies of Rolling Stone magazine N1317 (7/18), in its entirety; though the photocopied pages as a whole did not contain objectionable material; and said denial did not further a legitimate and neutral penological interest, in part because Texas Department of Criminal Justice has already made the determination that only "page ¹⁰⁷ ~~tot~~" contained objectionable content.

VI. RELIEF: LONT

~~publications; failing to provide a sufficient detailed description of said rejected correspondence to permit effective appeal;~~

Preliminary and/or Permanent Injunctive Relief: enjoining defendant from destroying said denied correspondence items and review the correspondence for objectionable content, remove and/or provide received photocopied pages of non-objective content and/or provide a sufficient detailed description of objectionable content so Ibenyenwa may appeal the denial, should he desire to do so; cease employing a blanket ban against photocopied publications; provide sufficient and adequate training for Sims regarding the proper handling of Ibenyenwa's incoming mail;

Declaration that the Texas Department of Criminal Justice's written or unwritten ^{mail from} inadequate training policy or procedure and/or BP-D3.91 was the moving force of Ibenyenwa's First and Fourteenth Amendment rights being violated.

A AGAINST ^{3rd} defendants in their OFFICIAL capacities;

DAMAGES:

\$1,000 in NOMINAL damages; and
\$1,000 in PUNITIVE damages

A AGAINST SIMS in her INDIVIDUAL capacity;

Plaintiff's entire costs/fees in this suit;

Pre and Post-judgement interest;

A jury trial on all issues triable by jury;

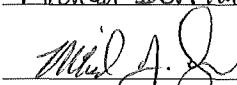
and at all times mentioned in this complaint defendants acted under the color of State law.

C. Has any court ever warned or notified you that sanctions could be imposed? YES NO

D. If your answer is "yes," give the following information for every lawsuit in which a warning was issued. (If more than one, use another piece of paper and answer the same questions.)

1. Court that issued warning (if federal, give the district and division): _____
2. Case number: _____
3. Approximate date warning was issued: _____

Executed on: 12/6/18
DATE

Michael Terrial Ihenyeawa

(Signature of Plaintiff)

PLAINTIFF'S DECLARATIONS

1. I declare under penalty of perjury all facts presented in this complaint and attachments thereto are true and correct.
2. I understand, if I am released or transferred, it is my responsibility to keep the court informed of my current mailing address and failure to do so may result in the dismissal of this lawsuit.
3. I understand I must exhaust all available administrative remedies prior to filing this lawsuit.
4. I understand I am prohibited from bringing an *in forma pauperis* lawsuit if I have brought three or more civil actions or appeals (from a judgment in a civil action) in a court of the United States while incarcerated or detained in any facility, which lawsuits were dismissed on the ground they were frivolous, malicious, or failed to state a claim upon which relief may be granted, unless I am under imminent danger of serious physical injury.
5. I understand even if I am allowed to proceed without prepayment of costs, I am responsible for the entire filing fee and costs assessed by the court, which shall be deducted in accordance with the law from my inmate trust account by my custodian until the filing fee is paid.

Signed this 26th day of December, 2018.
(Day) (month) (year)

Michael Terrial Ihenyeawa

(Signature of Plaintiff)

WARNING: Plaintiff is advised any false or deliberately misleading information provided in response to the above questions may result in the imposition of sanctions. The sanctions the court may impose include, but are not limited to, monetary sanctions and the dismissal of this action with prejudice.

December 20th, 2018

Clerk for the
United States Dist. Ct.
Lufkin Division
101 N. 3rd St.
Lufkin, TX 75901

Re: Ibenyenwa v. Tx. Bd. of Crim. Justice, No.

Filing of: Appl. for (IFP) / Certificate
§ 1483 Civ.1 Action Complaint;
Mem. of Law in support w/ Index of Att. and Exs.;
Declaration of Michael J. Ibenyenwa; and
Mt. for (TRO) / Prel. inj.

Clerk,

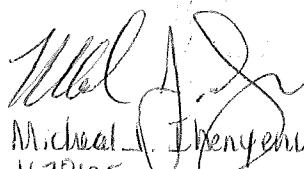
Enclosed you will find the aforementioned documents to be filed in the above
styled civil-action. Please forward to the court for resolution;

PLEASE BRING TO THE COURT'S ATTENTION, PLAINTIFFS:

MT.or Request for TRO / Prel. inj.
for immediate ruling.

Thank you.

Sincerely,


Michael J. Ibenyenwa
16781DS
TL Unit
3872 FM 350 South
Livingston, TX 77351

Enclosures